IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5875 OF 2006

Office Notes, Office Memoranda of : coram, appearances, Court's Orders: or directions and Registrar Orders:	Court's or Judge's orders

Mr.U.B. Nighot for the Petitioner.

Mr.D.M. Gupte for the Respondents.

CORAM : H.L. GOKHALE, J.

DATE : 9TH JANUARY 2007

P.C. :

1. Heard Mr.Nighot for the Petitioner and Mr.Gupte for Respondents No.1 to 4 (original Plaintiffs).

2. Rule. Rule is made returnable forthwith.

2. The Petitioner herein had not filed his written statement and therefore the learned Judge of the Trial Court passed an order on 29th June 2006 rejecting the application to take the written statement on record on the ground that it was filed beyond 90

days. It is this order which is under challenge.

3. Mr.Nighot submits that the written statement could not be filed because certain documents including the sale deed, which was relevant, were not available to the Petitioner.

4. Mr.Gupte for Respondents No.1 to 4 opposes the prayer and submits that this cannot be a reason not to file the written statement in time.

5. There is some force in the submission of Mr.Gupte. However, considering the fact that this is a dispute about the agricultural land in a village, I am of the view that no prejudice should be caused to the parties for such technicalities. The prejudice caused to the Respondents can be compensated by awarding appropriate cost. The suit is of the year 2004. Issues are not framed as yet. In the circumstances, the order passed by the learned Judge on 29th June 2006 is interfered with and the same is set aside. The application made by the

Petitioner to the Trial Court to take the written statement on record is allowed. The written statement will be taken on record on the Petitioner paying cost of Rs.1500/- to the Respondent.

6. Rule is made absolute as above.

(H.L. GOKHALE, J.)